

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 687 of 1996****For Approval and Signature:****HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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**BHAGWANDAS PARSHOTTAMDAS PATEL - Appellant(s)
Versus
RAJENDRAKUMAR MAFATBHAI PATEL & 2 - Defendant(s)**

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Appearance :

MR NILESH A PANDYA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
MR ARUN H MEHTA for Defendant(s) : 3,
MR KK NAIR for Defendant(s) : 3,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**and****HONOURABLE MR.JUSTICE MD SHAH****Date : 06/09/2006**

ORAL JUDGMENT**(Per : HONOURABLE MR. JUSTICE M.D.SHAH)**

1. This appeal is directed against the award of the Motor Accident Claims Tribunal, Vadodara, in M.A.C.P no.385 of 1990 dated 15-11-1995.. This appeal is by the claimants for enhancement of the award.

2. Shortly stated, accident took place on 29-12-1989. It is the case of the appellant-claimant that on that day while the appellant-claimant and his two brothers were crossing the road for proceeding to Welcome Group Hotel, R.C.Dutt Road, Vadodara, and when they reached border of the road towards Hotel at 7.00 p.m., at that time, the opponent no.1 came driving his scooter bearing registration no.GJN 2662 from the Railway Station side in a rash and negligent manner with excessive speed and dashed with the appellant-claimant, with the result, the claimant sustained bodily injuries. Immediately, he was shifted to the Lady Pillar Hospital, Vadodara, and treated as an indoor patient for six days. The claimant sustained

tibia fibula fracture on his left leg. He also sustained fracture on his wrist and was kept in plaster. The claimant had also taken treatment of Dr.Prabodh, Orthopaedic Surgeon, Ahmedabad. Due to the accident, the claimant was unable to sit cross-legged, he could not walk or drive his car. At the time of discharge, he was carrying permanent partial disability, his working capacity has reduced. After the accident, he had to employ attendant to look after him. According to the claimant, prior to the accident, he was earning Rs.7000/- to Rs.8000/- per month from partnerships in various business firms. On these grounds the appellant-claimant filed M.A.C.P no.385 of 1990 before the Motor Accident Claims Tribunal, Vadodara, claiming compensation of Rs.1,50,000/-.

3. Before the Tribunal, the opponent no.1 driver and the opponent no.3 Insurance Company had filed written objections resisting the claim petition and contended that the accident was a result of the sole negligence of the claimant. The opponent no.3 in fact denied the case of the claimant in toto. However, the opponent no.1 had not

stepped into the witness box . The opponent no.2-the owner of the vehicle had not chosen to appear.

4. After recording of evidence and hearing the parties, the Claims Tribunal came to the conclusion that the claimant sustained injuries on account of rash and negligent driving of the scooter by the opponent no.1 as he has failed to exercise due care and caution. The claimant has been awarded compensation of Rs.56,300/- in all under various heads with proportionate costs and interest at the rate of 15% per annum from the date of application till realization from the opponents nos.1 to 3 who were made jointly and severally liable . Feeling aggrieved and dissatisfied with the impugned judgment and award dated 15-11-1995, the claimant has preferred this appeal, on the grounds being discussed hereafter, for enhancement of compensation.

5. Learned Counsel Shri Nilesh Pandya for the claimants mainly submitted that the learned Tribunal has erred in awarding only Rs.30,600/- towards future economic loss.. According to him, the Tribunal ought to have taken the figure of Rs.1300/- for applying 17%

permanent partial disability of body as a whole. The learned Counsel further submitted that the average income of the appellant-claimant ought to have been considered at Rs.6500/- per month taking into consideration the income tax assessment orders as also the partnership deeds produced by the claimants which, according to the claimant, shows that he has suffered the average income of around Rs.20,000/-per year. Ultimately, the learned Counsel submitted that total compensation of Rs.1,50,000/- should have been awarded.

6. Now, in the instant case, the Tribunal has by taking into account several imponderables and uncertainties of life and also taking into consideration the statement made by the claimant that he had suffered loss of Rs.20,000/-per year, assessed the income of the claimant at Rs.1500/-per month. In view of 13% disability of left upper limb and 22% disability of left lower limb , in all 35% disability assessed by the Orthopaedic Surgeon, the Tribunal applied 17% permanent partial disability of body as a whole . As the claimant was aged 54 at the time of accident, the Tribunal adopted a multiplier of 10. Thus,

the Tribunal worked out the figure calculating $255 \times 12 \times 10 = \text{Rs.}30,600/-$ and awarded this amount towards future economic loss which in our opinion is the just and fair compensation under this head in view of the fact that the claimant though sustained injuries had not received injuries to the extent it can be said that the claimant is not able to continue with his partnership business.

7. Looking to the medical certificate disability certificate and the evidence on record, the Tribunal has assessed Rs.15,000/- towards pain, shock and suffering since the claimants even after discharge from hospital had complaints of pain while walking, difficulty in sitting cross-legged and squatting, cannot run or lift heavy weight, requires assistant for driving car. The Tribunal further examined the bills of Lady of Pillar Nursing Home, Baroda (Exh.37) as also the bills of X-ray report and after considering the evidence of the claimant on record and taking into account the extent of injuries sustained by the claimant awards Rs.5000/-towards medical expenses, Rs.2700/-towards attendant charges, Rs.2000/-towards special diet, Rs.1000/-towards transportation charges. However the Tribunal disallowed the claim of Rs.10,000/-

as salary to an employee who is alleged to have looked after the business due to want of evidence and rightly so. We are of the firm view that in the facts and on the circumstances of the present case, the Tribunal could not have awarded a higher compensation than awarded under these heads.

8. Thus, having examined the evidence on record meticulously, it is clear that the opponent no.1 was driving the scooter involved in the accident in a rash and negligent manner with excessive speed and that he had failed to exercise due care and caution. Therefore, we are of the considered opinion that on the facts of the case, the opponent no.1 being the driver, the opponent no.2 the owner and the opponent no.3 being the Insurance Company are jointly and severally liable to pay the compensation of Rs.56,300 /- in all to the claimants which the Tribunal has rightly awarded. Under the circumstances, we do not deem it proper to interfere with the impugned judgment and award passed by the Tribunal which is quite legal and proper.

9. In view of the above, the appeal fails and is hereby dismissed. Rule discharged. There shall be no order as to costs.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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